

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment and Compilation of Chapter 3-121  
Hawaii Administrative Rules

September 27, 2002

SUMMARY

1. §§3-121-1 and 3-121-2 are amended.
2. A new §3-121-4 is added.
3. §§3-121-5 to 3-121-8 are amended.
4. A new §3-121-9 is added.
5. §3-121-16 is amended.
6. A new §3-121-18 is added.
7. A new §3-121-28 is added.
8. Chapter 3-121 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 11

PROCUREMENT POLICY BOARD

CHAPTER 121

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## SUBCHAPTER 1

### PROCUREMENT POLICY BOARD

§3-121-1 Duties and advisor. (a) The duties of the procurement policy board shall be in accordance with sections 103D-202, 103D-211, and 103D-401, HRS.

(b) The administrator of the state procurement office shall serve as a nonvoting advisor to the policy board. [Eff 12/15/95; comp 11/17/97; am and comp 6/9/01; am and comp 11/8/02] (Auth: HRS [§]§103D-202[, 103D-401]) (Imp: HRS [§]§103D-202[, 103D-211, 103D-401])

§3-121-2 Procurement directives. (a) The policy board shall issue procurement directives to:

- (1) Cover the policies and procedures for conducting its business;
- (2) Issue interim rules;
- (3) Provide general procurement policy guidance; and
- (4) Issue forms, lists, or other information as required.

(b) A copy of each directive shall be provided to the chief procurement officers. [Eff 12/15/95; am and comp 11/17/97; am and comp 6/9/01; am and comp 11/8/02] (Auth: HRS §103D-202) (Imp: HRS §103D-202)

§3-121-3 Exceptions. The procurement policy board shall not exercise authority over:

- (1) The award or administration of any particular contract, or over any dispute, claim, or litigation pertaining thereto; and
- (2) The specifications for goods, services, or construction items, provided that the specifications are prepared in accordance with chapter 103D, HRS, and the rules of the policy board. [Eff 12/15/95; comp 11/17/97; comp 6/9/01; comp 11/8/02] (Auth:

HRS §§103D-202, 103D-403) (Imp: HRS §§103D-202, 103D-207, 103D-403)

§3-121-4 Interim rules. This subchapter of chapter 3-121, subtitle 11 of title 3, Hawaii Revised Statutes, replaces recinded interim rules subchapter previously adopted on 6/9/01 (file no. 2361).  
[Eff 11/8/02 ]

## SUBCHAPTER 2

### CHIEF PROCUREMENT OFFICERS

§3-121-5 Chief procurement officers identified. The chief procurement officers for each of the state entities shall be in accordance with section 103D-203, HRS. [Eff 12/15/95; am and comp 11/17/97; [am and comp 6/9/01](#); am and comp 11/8/02 ] (Auth: [HRS §103D-202](#)) (Imp: HRS §103D-203)

§3-121-6 Authority and duties. (a) Each chief procurement officer shall serve as the central procurement officer for its respective jurisdiction in accordance with sections 103D-205, 103D-207, and 103D-402, HRS.

(b) A chief procurement officer may issue price lists for goods and services pursuant to section 3-122-143.

- (1) When price lists are issued, it is mandatory that all departments and agencies procure goods and services from the price lists, unless otherwise determined by the Chief Procurement Officer and stated in the solicitation.
- (2) Exceptions to purchase outside of the price lists are allowed upon approval of the chief procurement officer. The burden of proof that the price list good or service is not suited to the agency's needs shall be the responsibility of the expending agency.
- (3) Use of price lists between chief procurement officers may be authorized upon mutual agreement and commitment to the terms of the price list pursuant to chapter 3-128. The

State's commitment shall be stated in the bid document. Eff 12/15/95; comp 11/17/97; am and comp 6/9/01; am and comp 11/8/02 ] (Auth: HRS §103D-202) (Imp: HRS §§103D-205, 103D-207, 103D-313, 103D-802)

§3-121-7 Additional duties of the administrator of the state procurement office. In addition to the duties in section 3-121-6, the administrator shall comply with section 103D-206, HRS. [Eff 12/15/95; comp 11/17/97; am and comp 6/9/01; am and comp 11/8/02 ] (Auth: HRS §103D-202) (Imp: HRS §103D-206)

§3-121-8 Centralization of procurement authority. Procurement authority shall be centralized pursuant to section 103D-207, HRS. [Eff 12/15/95; comp 11/17/97; am and comp 6/9/01; am and comp 11/8/02 ] (Auth: HRS §103D-202) (Imp: HRS §103D-207)

§3-121-9 Interim rules. This subchapter of chapter 3-121, subtitle 11 of title 3, Hawaii Revised Statutes, replaces recinded interim rules subchapter previously adopted on 6/9/01 (file no. 2361). [Eff 11/8/02 ]

§§3-121-10 to 3-121-15 (Reserved).

### SUBCHAPTER 3

#### DELEGATION OF CHIEF PROCUREMENT OFFICERS' AUTHORITY AND DUTIES

§3-121-16 Delegation of authority. (a) Each chief procurement officer may delegate any authority or duty or may revoke any authority or duty conferred upon the chief procurement officer by chapter 103D, HRS, and rules adopted by the policy board to any head of a purchasing agency within its respective jurisdiction. Factors to consider in making the decision to delegate include:

- (1) The expertise of the potential delegate in terms of procurement knowledge and any

specialized knowledge pertinent to the authority to be delegated;

- (2) The past experience of the potential delegate in exercising similar authority;
- (3) The degree of economy and efficiency to be achieved in meeting the State's requirements if authority is delegated;
- (4) The available resources of the office of the chief procurement officer to exercise the authority if it is not delegated; and
- (5) The consistency of delegation under similar circumstances.

(b) The delegation shall be made based on information provided by the head of a purchasing agency, which shall include, but not be limited to:

- (1) The title of the head of the purchasing agency or a designee who will have overall authority for procurement within the agency;
- (2) The categories of procurement, i.e., goods, services, or construction;
- (3) The dollar level of goods, services and construction procurement;
- (4) The methods of source selection:
  - (A) Competitive sealed bidding: Authority to award or enter into contracts pursuant to section 103D-302, HRS;
  - (B) Competitive sealed proposals: Authority to approve, award, or enter into contracts pursuant to section 103D-303, HRS;
  - (C) Professional services procurement: Except that as otherwise provided, the authority to negotiate, award, or enter into contracts pursuant to section 103D-304, HRS, rests with the head of a purchasing agency, and does not require a delegation by the chief procurement officer;
  - (D) Small purchases: Authority to award purchase orders pursuant to section 103D-305, HRS;
  - (E) Sole source procurement: Authority to negotiate, award, or enter into contracts pursuant to section 103D-306, HRS. Approvals pursuant to section 103D-306, HRS, shall remain with the chief procurement officer;
  - (F) Emergency procurements: Authority to

negotiate, award, or enter into contracts pursuant to section 103D-307, HRS. Approvals pursuant to section 103D-307, HRS, shall remain with the chief procurement officer; and

- (5) Position titles of those individuals who will be designated procurement officers by the head of the purchasing agency or designee. Information required by paragraphs (2), (3), and (4) shall also be required for each procurement officer delegated such authority. A sample delegation format shall be provided by the chief procurement officer.

(c) Delegation of authority by the head of a purchasing agency to a procurement officer is limited by and subject to chapter 103D, HRS, and its implementing rules. Heads of purchasing agencies should familiarize themselves with those limitations.

(d) The delegation from the chief procurement officer shall be in writing and shall specify:

- (1) The activity or function authorized;
- (2) Any limits or restrictions on the exercise of the delegated authority;
- (3) Whether the authority may be further delegated; and
- (4) The duration of the delegation.

(e) The chief procurement officer shall retain in its files each delegation determination. [Eff 12/15/95; am and comp 11/17/97; [am and comp 6/9/01](#); am and comp 11/8/02 ] (Auth: HRS §§103D-202, 103D-208) (Imp: HRS §103D-208)

§3-121-17 Limits to delegation of authority. The chief procurement officer may delegate to a designee who will sign for the chief procurement officer final approval for the following:

- (1) Exemptions to chapter 103D, HRS, pursuant to section 103D-102(b)(4), HRS.
- (2) Purchases by sole source selection under the provisions of section 103D-306, HRS;
- (3) Emergency procurements pursuant to section 103D-307, HRS;
- (4) Waiver to competitive sealed bid process pursuant to section 3-122-35; and
- (5) Waiver to competitive sealed proposal process pursuant to section 3-122-59. [Eff 12/15/95; am and comp 11/17/97; [am and comp 6/9/01](#); am

and comp 11/8/02 ] (Auth: HRS §§103D-102, 103D-202, 103D-208) (Imp: HRS §§103D-102, 103D-208, 103D-302, 103D-303, 103D-306, 103D-307)

§3-121-18 Interim rules. This subchapter of chapter 3-121, subtitle 11 of title 3, Hawaii Revised Statutes, replaces recinded interim rules subchapter previously adopted on 6/9/01 (file no. 2361).  
[Eff 11/8/02 ]

§§3-121-19 to 3-121-24 (Reserved).

#### SUBCHAPTER 4

#### PROCUREMENT ADVISORY COUNCIL AND OTHER ADVISORY GROUPS

§3-121-25 Procurement advisory council. (a) The procurement policy board may establish a procurement advisory council for:

- (1) The discussion of problems and recommendations for improvement of the procurement process; and
- (2) Conducting studies, research, analyses, and making reports and recommendations with respect to subjects or matters within the jurisdiction of the policy board, when requested by the policy board.

(b) The procurement advisory council, if created, shall consist of the chief procurement officers or their designated representatives, pursuant to section 3-121-5. If created:

- (1) The chairperson for the council shall be elected bi-annually by a majority of its members from among all of its members;
- (2) The council shall meet at least twice a year.  
[Eff 12/15/95; am and comp 11/17/97; comp 6/9/01; comp 11/8/02 ] (Auth: HRS §103D-202) (Imp: HRS §103D-202, 103D-205)

§3-121-26 Other advisory groups. The chief procurement officer may appoint advisory groups to



assist with respect to specifications or procurement in specific areas, and with respect to any other matters within the authority of the chief procurement officer. [Eff 12/15/95; comp 11/17/97; [comp 6/9/01](#); comp 11/8/02 ] (Auth: HRS §103D-202) (Imp: [HRS §103D-213](#))

§3-121-27 Reimbursement of expenses. Members of the procurement advisory council and other advisory groups may be reimbursed for expenses incurred in the performance of their duties, subject to such expenditure limitations as may be prescribed by the policy board and applicable law. [Eff 12/15/95; comp 11/17/97; [comp 6/9/01](#); comp 11/8/02 ] ([Auth: HRS §103D-202](#)) (Imp: HRS §§103D-202, 103D-205, 103D-213)

§3-121-28 Interim rules. This subchapter of chapter 3-121, subtitle 11 of title 3, Hawaii Revised Statutes, replaces recinded interim rules subchapter previously adopted on 6/9/01 (file no. 2361). [Eff 11/8/02 ]

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendments to and compilation of chapter 121, title 3, Hawaii Administrative Rules, on the Summary Page dated September 27, 2002 were adopted on September 27, 2002 following a public hearing held on September 17, 2002 in Honolulu, Hawaii; and via video conference from Honolulu, Hawaii on September 17, 2002 to Hilo, Hawaii; Wailuku, Maui; and Lihue, Kauai; after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune-Herald, West Hawaii Today, The Maui News and The Garden Island on August 17, 2002.

They replace interim rules dated 06/09/01 and shall take effect ten days after filing with the Office of the Lieutenant Governor.

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PHYLLIS M. KOIKE  
Chairperson  
Procurement Policy Board

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MARY ALICE EVANS  
State Comptroller

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BENJAMIN J. CAYETANO  
Governor  
State of Hawaii

Date: \_\_\_\_\_

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Filed

APPROVED AS TO FORM:

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Deputy Attorney General